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In the
Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-5244

DAVID R. RYLES,
PETITIONER,

v.

COMMONWEALTH OF MASSACHUSETTS,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

BRIEF FOR THE COMMONWEALTH OF MASSACHUSETTS IN OPPOSITION

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This petition invites the Court to reconsider and extend its decision in *Ham* v. *South Carolina*, 409 U.S. 524, 93

Sup. Ct. 848. *Ham* does not establish a blanket rule applicable to all cases. As the Court stated:

> "We think the Fourteenth Amendment required the judge *in this case* to interrogate the jurors upon the subject of racial prejudice . . . . The essential fairness required by the Due Process Clause of the Fourteenth Amendment required that *under the facts shown by this record* the petitioner be permitted to have the jurors interrogated on the issue of racial bias." 92 Sup. Ct. at 850. (Emphasis supplied.)

In addition, the Court contemporaneously vacated a similar case and remanded it for further consideration. *Ross* v. *Massachusetts*, 93 Sup. Ct. 968. The only question open to consideration was whether the facts fell within the *Ham* rule.

The Court in *Ham* did not attempt to set the limits of the rule it enunciated. This is a task which should, in the first instance, be left to lower courts. The time is not yet ripe for this Court to intervene a second time. The *Ham* case is less than nine months old and, so far as counsel are aware, the present case (with its companion, *Ross* v. *Massachusetts*, No. 73-5273) is the only case to construe it.

Even if *Ham* is to be extended, the present case does not present an adequate vehicle for this purpose. It was an armed robbery in which the only substantial question presented to the jury was identification of the robber. Only two witnesses testified: the victim and a police officer (who is, by coincidence, black). There was no suggestion of racial conflict. The defendant presented no evidence. There was neither necessity nor opportunity to weigh the relative credibility of members of racial groups.

Conclusion

The petition for certiorari should be denied.

For the Commonwealth,

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